THE HON'BLE SRI JUSTICE C.Y.SOMAYAJULU

WRIT PETITION No.2245 of 2003

Date: 28.11.2007

Between:

M/s. Arunodaya Agencies, Bharat Gas Distributors, Giddalur, Prakasam District, rep. by Smt. Y.Indira Devi

.....PETITIONER(S)

A N D

M/s.Bharat Petroleum Corporation Limited

.....RESPONDENT(S)

THE HON'BLE SRI JUSTICE C.Y.SOMAYAJULU

WRIT PETITION No. 2245 of 2003

ORDER:

Petitioner was given the distribution of Bharat Gas in Giddalur area of Prakasam District during 1995. Subsequently, in pursuance of an order of the Delhi High Court in CWP No.4003 of 1995 and batch dated
11-09-1998 her distribution and the distribution given to others were cancelled with certain directions. Appeal preferred to the Supreme Court against the said decision of the Delhi High Court was dismissed. As the respondent did not initiate action as per the directions given by the Delhi High Court, petitioner filed WP No.126547 of 2001, which is said to be pending. Thereafter, respondent published a notice of auction of distributionship together with the land and structures, including the LPG godown, in the Deccan Chronicle English daily dated 25.01.2003, without giving notice to the petitioner fixing the upset price for the distributionship with the land and structures of the LPG godown at Rs.6.50 lakhs. So, petitioner filed this petition questioning the notice of auction of her land by fixing the upset price including the land and structures also at Rs.6.50 lakhs, without issuing a notice to her.

2. In the counter affidavit filed on behalf of respondent it is stated that inasmuch as the writ petition involves interpretation of the judgment of Delhi High Court, it is the Delhi High Court but not this Court that has jurisdiction to entertain the writ petition and in

any event since the market value was fixed as per the directions of the Delhi High Court, and that the bidders are likely to bid for higher amount than the upset at the time of auction, the upset price fixed is not of any consequence and so the petitioner is not entitled to any relief.

3. Referring to relevant portion in the order of the Delhi High Court in CW No.4003 of 1995 and batch, reading:

> "The right to run the Petrol Pumps and / or Distributorship taken over by the Government / Oil Corporation concerned shall be disposed of by way of public auction to be held, if feasible, before Ist December, 1997, so that as far as possible, the public may not suffer or the suffering is for minimal period. The original allottee may also participate in the auction. The Petrol Pump / Distributorship shall be allotted to the highest bidder who shall run it on original terms and conditions. He shall have all the rights in respect of the land and construction thereon as the original allottee had on the date of auction, subject, however, to payments as determined by the Government / Oil Corporation / concerned authority being made by the highest bidder. Out of the auction money the value of the land and construction, if payable to the original allottee and as determined by the Oil Corporation, shall be paid to the original allottee and the remaining amount remitted to Prime Minister's Relief Fund. If the successful bidder is the original allottee he shall pay the difference between the auction money and the value of the land and construction as determined by the Oil Corporation"

Sri C.Prakash Reddy, learned senior advocate, appearing on behalf of the petitioner, contended that inasmuch as the amount received over and above the market value of the land and constructions belonging to the petitioner has to be remitted to the Prime Minister's Relief Fund, if proper value of the land and structures thereon belonging to the petitioner is not fixed by the respondent, petitioner would be put to any amount of loss and contended that had the petitioner been put on notice the upset price being fixed, she would have put forth her objection to the value, if it is not properly fixed, by producing documentary evidence to show that the value of the land in that area is about Rs.1500/- to Rs.2000/- per square yard as it is adjacent to the road which is a state high way, and as the market value was fixed arbitrarily without any basis and ignoring the directions of the Delhi

High Court, the respondent may be directed to fix proper upset price for the land and structures belonging to the petitioner by taking into consideration the basic value register at least.

4. The contention of Sri O.Manohar Reddy, learned counsel for respondent, is that since this writ petition relates to interpretation of the judgment of the Delhi High court, it is the High Court of Delhi but not this Court that has jurisdiction to decide this petition. It is his contention that inasmuch as the petitioner, as per the direction of the Delhi High Court, is entitled to the value of the land as determined by the respondent, the respondent got the property of the petitioner evaluated by a Registered Valuer and Consulting Engineer at Kurnool and inasmuch as the certificate issued by him shows that the market value of the land as Rs.6,000/- per cent, the same value is shown as the upset price and so the upset price of Rs.6.50 lakhs fixed is not arbitrary. In reply, the contention of Sri C.Prakash Reddy is that since the valuation report relied on by the respondent shows that the Valuer fixed the value on the basis of local enquiry without supported by any proof and as he did not take into consideration even the basic value register, the value fixed by the valuer appointed by the respondent does not reflect the real market value.

5. Inasmuch as the cause of action for filing this petition arose within the jurisdiction of this Court, I am unable to agree with the contention of the learned counsel for respondent that this Court has no jurisdiction to entertain this writ petition. Merely because the interpretation of the judgment of the Delhi High Court is necessary for disposal of this petition, petitioner need not be driven to the Delhi High Court.

6. The fact that the bidders would bid for a higher value than the upset price fixed by the respondent is not of any relevance for

disposal of this petition because the petitioner, as per the direction of the Delhi High Court extracted above, is entitled only to the value of the land and constructions and the remaining amount received during the auction, after deducting the value of the land and super structures, has to be credited to the Prime Minister's Relief Fund and only the value of the land and super structures would be paid to the petitioner. Upset price would be nearer to the market value of the land and super structures. So, fixation of appropriate upset price, which is nearer to the market value of the land and super structures is essential because, the petitioner will be entitled only to that amount fixed as upset price and the remaining amount of the auction would be credited to the Prime Minister's Relief Fund.

7. I feel it relevant to state that in G.O.Ms.No.301, Revenue (Registration I) dated 4-5-1998, the Government of Andhra Pradesh framed A.P. Revision of Market Value Guidelines Rules, 1998, for knowing the value of the immovable property covered by the documents presented for registration because as per Section 47-A (6) of the Indian Stamp Act, 1899, the market value of any property, for the purpose of that Section, would be the price which in the opinion of the Collector or the appellate authority, as the case may be, such property would have fetched or would fetch if sold in the open market on the date of execution of any instrument.

8. So, the valuer appointed by the respondent could have fixed the value of the land and structures of the petitioner as per the statutory registers. Without doing so the valuer appointed by the respondent fixed the value at Rs.6,000/- per cent on the basis of 'local enquiry'. What was the local enquiry made by him is not known from his report. Merely because the Delhi High Court observed that "the value of the land and construction" "as determined by the Oil Corporation" shall be paid to the

allottee/owner, it does not mean that the respondent can adopt its own valuation or a valuation arrived at by a valuer without proper basis and pay that amount only to the original owner. The valuation adopted should be just and fair and should be such that the respondent would have sold that property to others, if it were its own property.

9. Inasmuch as the valuer appointed by the respondent did not take into consideration the Basic Value Register and arrived at the value as per the 'local enquiry' without any proof in support thereof, it cannot be said that the market value adopted by the respondent is not the proper value.

10. I am unable to agree with the contention of the learned Senior Advocate for petitioner that the present market value has to be taken into consideration because had the petitioner not obtained the stay of auction in WPMP No.2936 of 2003 dated 06.02.2003, the auction would have taken place on the date fixed for the auction. Even if the auction were held, in the event of success, would have been entitled to the just value and the respondent would have been asked to pay that amount to the petitioner but not the amount fixed by the valuer appointed by the respondent. Therefore, petitioner is entitled only to the market value of the land and super structures at the rate prevailing during February and March of 2003 but not the value that might fetch during the auction to be held in future.

11. For the above reasons, the writ petition is disposed of with a direction to the respondent to get the market value of the land and structures belonging to the petitioner appraised by a Registered Valuer by taking into consideration the values mentioned in the Basic Value Register during February and March 2003, and proceed with the auction and appropriate the sale proceeds as per the directions given by the Delhi High Court. Parties are directed

to bear their own costs in this petition.

28.11.2007

Cvrk